

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tahreem Khan	Team: Squad #11	CCRB Case #: 202003945	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/03/2020 11:15 PM	Location of Incident: Bergen Street between New York Avenue and Brooklyn Avenue	18 Mo. SOL 5/4/2022	Precinct: 77		
Date/Time CV Reported Thu, 06/04/2020 12:31 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 06/04/2020 12:31 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. Officers			
3. POM Jianwei Chen	08758	933689	071 PCT
4. POM Martin Ortiz	03209	949428	071 PCT
5. POM Michael Baratta	3356	950046	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Haber	11401	955967	071 PCT
2. POM Thomas Owens	08023	961051	071 PCT
3. DI Ludwig Romero	00000	926355	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against individuals.	
B. An officer	Discourtesy: An officer spoke discourteously to individuals.	
C. Officers	Discourtesy: Officers gestured discourteously toward individuals.	
D. Officers	Off. Language: Officers made remarks to individuals based upon race.	
E. POM Jianwei Chen	Untruthful Stmt.: Police Officer Jianwei Chen provided a misleading official statement to the CCRB.	
F. POM Martin Ortiz	Untruthful Stmt.: Police Officer Martin Ortiz provided a false official statement to the CCRB.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)		
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## Case Summary

On June 4, 2020, § 87(2)(b) filed this complaint with the CCRB online after witnessing the allegations in this complaint from her apartment building. On June 7, 2020, § 87(2)(b) filed a separate complaint online related to this incident after she saw a video compilation on § 87(2)(b) which showed unidentified officers running after unidentified protestors and tackling them to the ground. § 87(2)(b) was not present for this incident and her complaint § 87(2)(b) was combined with this case on July 20, 2020.

On June 3, 2020, at approximately 11:15 p.m., § 87(2)(b) was in her apartment, located at § 87(2)(b) in Brooklyn when she heard noise outside on her block. § 87(2)(b) § 87(2)(b) She went to the front of her apartment building, where she saw approximately 25 police officers and 50 protestors. § 87(2)(b) visibility was focused on the middle of her block, specifically, towards the rear of 789 Saint Mark Avenue and the entrance of 1206 Bergen Street. From the front stoop of her building, she saw officers chase the protestors from New York Avenue towards Brooklyn Avenue. She saw officers push and shove the demonstrators, some officers chased a group of the protestors into the entryway alcove of 1206 Bergen Street, and other officers hit the unidentified demonstrators with their batons on their shoulders, backs, and arms (**Allegation A: Physical force,** § 87(2)(g) The officers arrested the protestors by placing their hands in zip ties and then brought them to marked police vans located in the middle of the Bergen Street block. When the officers were about to leave the block, § 87(2)(b) heard one unidentified police officer yell, “Fuck you” to all her neighbors who reside in the building across from her own (**Allegation B: Discourtesy,** § 87(2)(g) § 87(2)(b) neighbor, § 87(2)(b) recorded this portion of the incident. Later, § 87(2)(b) found a video of this same incident on the Twitter account § 87(2)(b) She noted that in that video, she saw officers extending their middle finger at unidentified individuals (**Allegation C: Discourtesy,** § 87(2)(g) As the officers drove away, they played an ice cream song that is known as “Turkey in a Straw,” and in other contexts as, “Nigger Love a Watermelon” (**Allegation D: Offensive Language,** § 87(2)(g)

Police Officer Jianwei Chen and Police Officer Martin Ortiz, both of the 71<sup>st</sup> Precinct, respectively provided misleading official statement, and a false official statement to the CCRB (**Allegations E and F: Untruthful Statement,** § 87(2)(g) § 87(2)(g), § 87(4-b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

The investigation located 17 videos related to this incident through social media and copies that were provided by complainants and witnesses. Of those 17 videos, only three videos showed the alleged misconduct of unidentified officers using physical force, discourteous language, and offensive language towards individuals. Only those three videos also provided a clear edit-free view of Bergen Street between Brooklyn Avenue and New York Avenue (**Board Review 2 – 4**).

## Findings and Recommendations

**Allegation (A) Force: Officers used physical force against individuals.**

**Allegation (B) Discourtesy: An officer spoke discourteously to individuals.**

**Allegation (C) Discourtesy: Officers gestured discourteously toward individuals.**

**Allegation (D) Offensive Language: Officers made remarks to individuals based upon race.**

### Facts

When § 87(2)(b) went outside of her apartment building, she saw about 20 or 25 uniformed police officers, who were wearing riot helmets and holding their batons, interact with approximately 50 protesters. § 87(2)(b) was unable to describe these officers. The officers hit protesters with their batons on their shoulders, backs, and arms, and then arrested them by placing their hands in zip ties (**Board Review 1**). After about 30 minutes, while the officers were retreating, § 87(2)(b) saw a White male officer approach the passenger's side vehicle of a marked police SUV with the plate number 5343. § 87(2)(b) was able to view the vehicle number by zooming into a video of the incident that was taken by § 87(2)(b). This officer stood to be under 6'0" tall, had a slightly heavysset body build, his age was possibly in 40s, he was clean-shaven, he wore a riot helmet, and was dressed in standard uniform. Before entering the vehicle, the officer faced the opposite side of the street, look up by tilting his head, and yelled "Fuck you!" at § 87(2)(b) neighbors. As the officers drove away from the scene, they played an ice cream song, "Nigger Love a Watermelon" through the loudspeaker of one of the police vehicles. According to § 87(2)(b) this song was released in 1916 and had racist connotations; during her interview, she referenced an NPR article, "Recall that Ice Cream Truck Song? We Have Unpleasant News for You," which she later emailed to the undersigned (**Board Review 8**).

§ 87(2)(b) a reporting non-witness, stated that she viewed a video compilation of this incident that was posted on Instagram by The Strangers Project page (**Board Review 5**). The video showed different views of this incident, including angles from a window or fire escape. In the videos, she saw officers running after protesters and tackling them. She did not know the identities of any of the officers or civilians in the videos. The link § 87(2)(b) shared for the Instagram post that she viewed was the same post that § 87(2)(b) shared the link to.

§ 87(2)(b) was in her second-floor apartment located at § 87(2)(b) in Brooklyn, when she heard chanting. She went to her window, which looked over Bergen Street between Brooklyn Avenue and New York Avenue. She saw 10 to 15 uniformed male officers, five or fewer of whom wore white shirts, and the remaining officers were dressed in the standard navy-blue uniforms and others wore lighter blue shirts (**Board Review 6**). These officers, with batons in their hands, were chasing civilians on Bergen Street from New York Avenue towards Brooklyn Avenue. She saw two black unmarked sedans with five or six officers in them, possibly two of whom wore plain clothes, and the rest of them were dressed in uniforms. In addition to officers, § 87(2)(b) saw approximately 50 protesters, half of whom were on bikes. She saw the officers target protesters who were on bikes as the officers used their asps to hit the protesters on their stomach or hit their bikes. In once specific instance, § 87(2)(b) saw an officer take an individual to the ground and zip tie their hands together but was unable to provide additional information as her view was obstructed by trees. As the officers and civilians were spread out around the block, she was unable to provide the exact locations as to where the use of force allegations occurred. This portion of the incident lasted approximately two minutes. It appeared that one of the unmarked sedans was not

working, so six or eight officers stayed behind to help start that vehicle. These officers stayed on Bergen Street for 20 to 30 minutes. During this time, one of § 87(2)(b) neighbor's yelled, "Fuck you!" In response, an unknown officer yelled, "Fuck you too!" § 87(2)(b) was unable to provide any description of this officer.

§ 87(2)(b) was in his apartment when he heard the protest march followed by a commotion. He went onto his fire escape, which overlooks Bergen Street between Brooklyn Avenue and New York Avenue, to see what was happening (**Board Review 7**). § 87(2)(b) view was obstructed by trees, but he was able to see two or four marked NYPD SUVs and some unmarked black SUVs. He saw about two dozen protesters being chased by 10 to 20 male officers, who tried to grab the protesters any way that they could. Some officers were dressed in dark uniforms, less than five of the officers wore white shirts, and the remaining officers were dressed in plain clothes and had exited the unmarked vehicles. From his vantage point, § 87(2)(b) did not see any officers wearing riot helmets or carrying batons. He recalled one specific incident that stood out to him when he saw an officer run toward a young adult male and body slam him. § 87(2)(b) view was obstructed after that and he was unable to provide any additional information regarding that instance, but he later saw that this individual had his hands zip tied. This portion of the incident lasted five to 10 minutes. Once the protesters had left the block, the same officers who chased the protesters remained on Bergen Street. The neighbors on the block started chanting, "Whose streets? Our streets!" To mock the civilians, the officers chanted the same thing back. One officer shouted, "Fuck you!" § 87(2)(b) was unable to see who this officer was but believed that he was directing this statement at one of his neighbors. § 87(2)(b) had sent nine videos from this incident, some of which were taken by him, and others were taken by his neighbors.

### BWC

As per NYPD Legal Bureau for each of the three BWC requests, there was no responsive BWC footage related to this incident from the 77<sup>th</sup> Precinct, Strategic Response Group 3 or Emergency Services Unit (**Board Reviews 11 – 13**).

### Video Footage

Of the total 17 videos that were gathered for this case, the raised allegations were best represented in three videos, all of which were provided by § 87(2)(b). He provided videos that were taken by his neighbors, which he had eventually compiled together to post on social media. On June 23, 2020, he sent the original videos that were either recorded by himself or sent to him by his neighbors (**Board Review 2 – 4**).

The video located in IA 91 (**Board Review 2**) is cell phone footage that was taken by an unidentified individual during this incident and appears to be a longer version of the video that § 87(2)(b) shared with CCRB in IA 2 (**Board Review 49**), which was recorded by § 87(2)(b). It shows civilians cursing at officers and getting the officers to get off their block. At 24 second mark on the media player, a White male officer dressed in uniform approaches his vehicle, the plate number of which reads 5343. As he gets to his vehicle, he looks up and yells, "Hey, fuck you!" It appears that multiple civilians on the block respond by stating "fuck you!" This video was then converted by the undersigned investigator through the InputAce video enhancing software and zoomed in 300%. A frame-by-frame walkthrough of the video confirmed the initial identification of the police vehicle's license plate (**Board Review 24**).

The video located in IA 86 (**Board Review 4**) is cell phone footage that was taken by § 87(2)(b). It shows a different angle than the video from IA 91, possibly a higher angle from across the street. At the 17 second mark on the media player, one of the vehicles plays the ice cream truck song melody

and the sound travels as the police vehicles drive away. It is unclear which vehicle plays this song. At the 21 second mark, someone says, “Hey, fuck you!” Several people say “fuck you” in response.

The video located in IA 84 (**Board Review 3**) is cell phone footage that was taken by an unidentified individual. It shows multiple instances of physical force being used on civilians. The video also shows officers in the standard navy-blue uniform as well as two officers in the lighter blue uniforms. At the 9 second mark on the media player, an unknown officer grabbed an unknown civilian and let them go. At the 22 second mark, an unknown officer pushes an unknown civilian into a wall. This person then continues to run. Unknown officers are generally chasing and trying to grab unknown civilians throughout this video.

#### NYPD Documents Reviewed

On July 17, 2020, a search of the NYPD’s Booking, Arraignment and Disposition System (BADS) yielded negative results for any arrests that occurred on June 3, 2020, within the confines of the 77<sup>th</sup> Precinct, which is the precinct of occurrence (**Board Review 46**). A copy of Roll Call and the Daily Vehicle Assignment Sheet from the 77<sup>th</sup> Precinct, were received and reviewed; there were no specific posts near the incident location for the protest noted on either document, neither was a marked vehicle with the plate number 5343 (**Board Reviews 9 – 10**). Mass Arrest Processing documents were obtained but did not show any information about any potential officers or civilians involved in this case as it does not list the arrest locations, only the names of individuals arrested, their arresting officer’s names, and the precinct of arrest (**Board Review 16**). Further, the Detail Roster from Patrol Borough Brooklyn North did not reveal any officer assigned to a protest or mobilization in the vicinity of Bergen Street between Brooklyn Avenue and New York Avenue in Brooklyn (**Board Review 17**). An Event Summary from the 77<sup>th</sup> Precinct was requested, which showed Event Number § 87(2)(b) occurring at Bergen Street and New York Avenue at 11:08 p.m. on June 3, 2020, which matched the incident date, time, and location for this case (**Board Review 18**). A Communications CD and Event Chronology of this assignment was requested, which revealed that the 71<sup>st</sup> Precinct Commanding Officer was on scene and requested a van for prisoner transport, but it did not reveal any additional information regarding which units of officers were on scene as the five radio messages were choppy at times and at other times, chaotic as multiple officers spoke over one another (**Board Review 19**).

A vehicle check for a marked police vehicle with the license plate 5343 was requested from IAB, which showed that this vehicle was assigned to the Fleet Services Division (**Board Review 14**). A check for vehicle 5343 sent to Fleet Services Division revealed that this vehicle had been loaned to the 71<sup>st</sup> Precinct on June 3, 2020 (**Board Review 15**). A copy of the Roll Call from June 3, 2020 of Tour 3 from the 71<sup>st</sup> Precinct documented that Police Officer Martin Ortiz and Police Officer Jianwei Chen were assigned to vehicle 5343 at the time of this incident (**Board Review 21**). This Roll Call also indicated that there was only one Community Affairs officer, who would have been dressed in a lighter blue shirt: Police Officer Michael Baratta.

A review of PO Ortiz’s memo book showed that he was the recorder, partnered with PO Chen, and was assigned to RMP 5343 (**Board Review 22**); meanwhile, PO Chen had no entries noted in his memo book regarding being assigned to RMP 5343 as he was stationed at a fixed post (**Board Review 23**). Both PO Ortiz and PO Chen’s memo book entries noted that they remained at 770 Eastern Parkway in Brooklyn for the entirety of their tours. Their memo books did not indicate why the officers were assigned to this location. According to PO Ortiz’s memo book, he at his post at 6:30 p.m., Sgt. Keith Cheng reviewed his memo book at 7:13 p.m., Sgt. Kelley reviewed his memo book at 7:53 p.m., Sgt. Cheng again reviewed PO Ortiz’s memo book at 12:23 a.m. into June 4, 2020, and he ended his tour at 12:24 a.m. (**Board Review 22**); throughout his tour, he remained at the same location and his supervisors visited him at the same location. In his interview, PO Ortiz

(**Board Review 30**), noted that he had accidentally created the End of Tour entry at 12:24 a.m. He had actually ended his tour at 6:35 a.m. According to PO Chen's memo book, he reached 770 Eastern Parkway at 6:00 p.m., Sgt. Cheng reviewed his memo book at 7:13 p.m. at the same location, Sgt. Kelley reviewed his memo book at 7:53 p.m. at 770 Eastern Parkway, Sgt. Cheng again reviewed PO Ortiz's memo book at 12:23 a.m. into June 4, 2020, at the same location, and he ended his tour at 6:35 a.m. (**Board Review 23**). At no point does PO Chen's memo book indicate that he left 770 Eastern Parkway. There were no notations on Roll Call indicating that the vehicle had been transferred to other officers.

Several Automatic Vehicle Locator (AVL) requests were submitted to find out of any additional police vehicles in the vicinity of Bergen Street between New York Avenue and Brooklyn Avenue and to find any other information on RMP 5343. Two AVL requests were submitted to the 71<sup>st</sup> Precinct. According to Det. Anthony DeBlasio, of the Internal Affairs Bureau, the 71<sup>st</sup> Precinct stated, "the 71 doesn't have RMP 5343" (**Board Review 25**). A second AVL request was then submitted to the 71<sup>st</sup> Precinct as the investigation had evidence that RMP 5343 was loaned to the 71<sup>st</sup> Precinct by Fleet Services Division on June 3, 2020. Sergeant Ahmed Khan, of the Internal Affairs Bureau, forwarded the undersigned an email from Sergeant Ahmed Shohatee, the Assistant Integrity Control Officer from the 71<sup>st</sup> Precinct, which stated, "Please be advised that the vehicle that you are inquiring about does not come up on the AVL nor it belongs to the command. This vehicle number maybe wrong" (**Board review 26**). Finally, a general AVL request was submitted to the 77<sup>th</sup> Precinct to see if any vehicles were in of the incident location. The request was closed by IAB as vehicle plate numbers are required to process AVL requests (**Board Review 27**).

#### Officers Interviewed

Five officers, two sergeants, and one lieutenant who were working during Tour 3 were interviewed for this case: PO Ortiz, PO Chen, PO Baratta (who has since been promoted to Detective), PO Michel Haber, PO Thomas Owens, Sgt. Cheng, Sgt. Gesner Charles, and Lieutenant Akm Alam, all of whom were assigned to the 71<sup>st</sup> Precinct at the time of this incident. PO Hansen and PO Trentowski did not have any recollection of this incident or memo book entries regarding it and had ended their tours prior to this incident (**Board Reviews 28 – 29**).

PO Ortiz was interviewed twice. During PO Ortiz's first interview (**Board Review 47**), he stated that he was assigned to secure a Temporary Headquarters Vehicle (THV) posted at 770 Eastern Parkway in Brooklyn, believed RMP 5343 remained in his and PO Chen's possession for the entirety of his tour as he did not have any entries noting otherwise. PO Ortiz noted that under normal circumstances, his vehicle could have been taken, for instance, if he had an issue with the car, but as there were no notations in his memo book, he did not believe that was the case. Further, PO Ortiz stated that on that day, the circumstances were not normal as there were protests occurring and there were multiple police details at the time. PO Ortiz did not leave his post and did not have any entries in his memo book noting such. PO Ortiz reviewed the video in IA 2 (**Board Review 49**). He did not recognize the officer in the middle of the frame, nor did he recognize the scene or any officers present. PO Ortiz was notified that the vehicle in the video has been identified as 5343. PO Ortiz stated that he was not the officer seen in the video, despite him being assigned to that vehicle. PO Ortiz did not yell, "Fuck you" at any civilians, nor did he observe any other officer do so. PO Ortiz reviewed the video in IA 86 (**Board Review 4**), which showed allegations of a police vehicle playing a song with racist connotations. He did not recognize the scene shown. PO Ortiz stated that he did not stick his hand out of an unmarked vehicle and extend his middle finger at any of the civilian's present, nor did he observe any other officer do so. PO Ortiz did not observe any officers play "Turkey in the Straw" also known as "Nigger Love a Watermelon" song, nor did he become aware of it. PO Ortiz reviewed the video in IA 84 (**Board Review 3**), which shows

unidentified officers use force on civilian's present; he did not independently observe officers use this force during the incident, nor did he participate in this use of force.

In PO Ortiz's second interview (**Board Review 30**), he stated that on the day of the incident, PO Ortiz was the recorder and PO Chen was the operator. He mentioned that if his assigned vehicle was reassigned to a different set of officers, then PO Ortiz would have made a memo book entry about it as he would have needed to inspect the vehicle for mileage, gas, and any items left in the vehicle. PO Ortiz did not recall any instance when another officer had to take his vehicle. He did not recall leaving his post except to use the restroom. He did not recall responding to Bergen Street between Brooklyn Avenue and New York Avenue, which was approximately one mile away from his footpost. PO Ortiz was shown the video in IA 91 (**Board Review 2**), which is a longer version of the video from IA 2 (**Board Review 49**), which shows an unidentified officer yell, "Fuck you" at civilians. Additionally, he was also shown an InputAce Screenshot of a 300% zoomed in view of the plate number for RMP 5343 (**Board Review 24**). PO Ortiz stated that due to the quality of the photograph, he was unable to clearly make out the plate number. PO Ortiz also reviewed the footage once again from IAs 86 and 84, which respectively show unidentified officers playing a song with racist undertones and unidentified officers using force against unidentified protesters. PO Ortiz maintained that none of the events shown in any of the video footage seemed familiar to him.

PO Chen was also interviewed twice. In PO Chen's first interview (**Board Review 48**), he confirmed that he too was at a fixed THV post and remained there for the entirety of his tour. He stated that although he was assigned to a footpost, his vehicle for the day would not have been assigned to another unit. PO Chen did note that Roll Call could show that the officers were assigned to a vehicle, but then the vehicles can be switched an hour later, for example. Roll Call would not reflect that change. He clarified that if his vehicle was taken from him, the unit who took the vehicle would prepare documentation on it and the supervisor would note it on the Roll Call. PO Chen would have made an entry in his memo book if he left his post for any reason.

PO Chen reviewed the IA 2 (**Board Review 49**); he did not recognize the scene or the officer saying, "Fuck you." PO Chen did not yell, "Fuck you" at any civilians. PO Chen reviewed the video in IA 86 (**Board Review 4**), which showed a police vehicle playing a song with racist connotations. He did not recognize this scene. PO Chen did not stick his hand out of an unmarked vehicle and raised his middle finger at any civilian's present. PO Chen was not assigned to an unmarked vehicle on this date. PO Chen did not play "Turkey in the Straw" also known as "Nigger Love a Watermelon" song as he did not know what that was, nor did he observe any other officer do so. PO Chen reviewed the video in IA 84 (**Board Review 3**), which showed unknown officers use physical force against unidentified protesters. He did not recognize that scene. PO Chen did not observe officers use force on protesters present during this incident, nor did he participate in this use of force. PO Ortiz, PO Chen's partner did not participate in any such physical force, as far as PO Chen knew.

In his second interview (**Board Review 31**), PO Chen stated that while he did not know the vehicle number that he used to arrive at the THV, he stated that PO Ortiz, his partner, must have the vehicle noted in his memo book as he was the recorder. PO Chen did not recall if he was in possession of his vehicle for his entire tour. PO Chen also did not recall anyone borrowing his vehicle, and stated that if someone did, then PO Chen would have made notations in his memo book. He stated that it was possible that he forgot to make a memo book entry and it was possible that someone borrowed his vehicle—if it was authorized by a supervisor—due to emergency circumstances related to the protests at the time. PO Chen reviewed the Roll Call from June 3, 2020, of Tour 3 from the 71<sup>st</sup> Precinct (**Board Review 21**) and confirmed that he and PO Ortiz were assigned to RMP 5343. PO Chen viewed the video in IA 91 (**Board Review 2**), which is a longer version of the video from IA 2 (**Board Review 49**), that shows an unidentified officer yell, "Fuck you" at civilians. Additionally,



he was also shown an InputAce Screenshot of a 300% zoomed in view of the plate number for RMP 5343 (**Board Review 24**). PO Chen identified the plate number in the photograph at 5343. PO Chen also reviewed the footage once again from IAs 86 and 84. The video from IA 86 shows unidentified officers playing a song with racist undertones. The video in IA 84 shows unidentified officers using force against unidentified protesters. PO Chen provided consistent testimony with his previous interview that none of the events shown in any of the video footage seemed familiar to him.

The 71<sup>st</sup> Precinct Roll Call from Tour 3 on June 3, 2020 (**Board Review 21**) indicated that there were two Patrol Supervisors on this day: Sgt. Cheng and Sgt. Charles, both of whom were interviewed as well.

Sgt. Cheng (**Board Review 32**) confirmed that he was assigned as a Patrol Supervisor on the day of the incident. He did not recall if he conducted Roll Call as there would have been an entry in his memo book if he did so. There was no entry in his memo book stating that he conducted Roll Call. Around 11:03 p.m., approximately 12 minutes before the time of this incident, Sgt. Cheng was visiting PO Viktoria Bibolova and PO Robby Boodoo at 245 Hawthorne Street in Brooklyn, as noted in his memo book. Sgt. Cheng reviewed the Roll Call from June 3, 2020, of Tour 3 from the 71<sup>st</sup> Precinct (**Board Review 21**), and saw that Sgt. Charles was also a Patrol Supervisor. Sgt. Cheng did not recognize the handwriting on the Roll Call and confirmed that it was not his. Sgt. Cheng stated that if a vehicle is taken from one set of officers and given to another set of officers, then that change needs to be reflected within roll call by a Patrol Supervisor. Further, Sgt. Cheng stated that the Patrol Supervisor is responsible for keeping track of the fleet of vehicles that are assigned to the command. He confirmed that based on the roll call he was presented; PO Ortiz and PO Chen were assigned to RMP 5343 at the time of the incident. On June 3, 2020, Sgt. Cheng did not recall receiving any calls from either PO Chen or PO Ortiz regarding another set of officers needing to use their vehicle.

Sgt. Charles (**Board Review 33**) stated that he was also a Patrol Supervisor on June 3, 2020, and disbursed patrol assignments during Roll Call, which included giving vehicles out to officers. He stated that notations regarding which vehicle is assigned to which officer would be reflected on Roll Call. As a Patrol Supervisor, Sgt. Charles would be able to take a vehicle away from one set of officers and give it to another set of officers. He did not recall having to do so on that day. Sgt. Charles reviewed the Roll Call from June 3, 2020, of Tour 3 from the 71<sup>st</sup> Precinct (**Board Review 21**) and confirmed that the handwriting on the Roll Call was his own. He also confirmed that PO Chen and PO Ortiz were assigned to RMP 5343. Sgt. Charles clarified that if the officer's vehicle was given to someone else, then the officers would have made that notation in their memo books. The change in vehicle would not be documented anywhere else, not even on the Roll Call. Sgt. Charles could not think of any reason why PO Chen and PO Ortiz's vehicle would have been taken from the officers and given to another set of officers on the incident date. Both Sgt. Cheng and Sgt. Charles reviewed the video from IA 91 (**Board Review 2**), which shows an officer yell "Fuck you" at civilians and then viewed a screenshot of a frame of the video between the 33 and 34 second mark, zoomed in to 300% (**Board Review 24**). Sgt. Cheng and Sgt. Charles stated that the vehicle number with the zoomed in screenshot looked like plate #5343. They also reviewed the videos in IA 84, which shows unidentified officers use physical force against unidentified civilians, and IA 86, which shows unidentified officers play a song with racist undertones (**Board Review 2 – 4**) and confirmed that they were not present during this incident. Both sergeants were unable to identify any officers from these videos.

PO Baratta was interviewed as he was the sole Community Affairs Officer noted on Roll Call from June 3, 2020 of Tour 3 from the 71<sup>st</sup> Precinct (**Board Review 21**). PO Baratta, who had since been

promoted to the rank of Detective, stated that on the day of the incident, at approximately 11:15 p.m., he, Det. Vincent Martinos, and Deputy Inspector Ludwig Romero, were on their way back to the 71<sup>st</sup> Precinct stationhouse towards their end of tour in their unmarked black sedan (**Board Review 34**). The officers were leaving their post at the Barclays Center on Atlantic Avenue in Brooklyn, which was located within the confines of the 77<sup>th</sup> Precinct. On their way back to the command, the officers heard a call for help come over the radio from Bergen Street between Brooklyn Avenue and New York Avenue. PO Baratta did not know who requested help. After reaching the middle of the block on Bergen Street between Brooklyn Avenue and New York Avenue, PO Baratta saw a crowd of 10 to 15 people running towards his vehicle. He exited the car and went to the sidewalk, when one unknown individual surrendered themselves to PO Baratta by laying chest-down on the ground and placing their hands behind their back. PO Baratta did not use any physical force on this person, nor did he know why this person was surrendering themselves. PO Baratta did place his hand on this person's back to secure this individual's hands. PO Baratta watched over this person for 30 seconds to a minute before an unknown uniformed officer came and took over the individual. Det. Martinos who, was near PO Baratta, had a similar interaction with an unknown individual, who had a similar interaction with someone surrendering themselves to him. After about another minute, PO Baratta saw 15 to 25 uniformed officers arrive. He did not know who these officers were, nor did he recall if they had any interactions with the civilian's present. PO Baratta did not know where DI Romero was throughout this incident. As the officers were getting ready to leave, their black unmarked sedan broke down. PO Baratta called his colleague from the 71<sup>st</sup> precinct, who is good with cars, PO Michael Haber. Within 10 to 15 minutes, PO Haber arrived, probably with his partner, in a marked SUV. It took PO Haber 15 to 20 minutes to fix the vehicle, after which everyone was on their way. PO Baratta reviewed the videos from IA 91, which shows an officer yell "Fuck you" at civilians; IA 84, which shows unidentified officers use physical force against unidentified civilians; and IA 86, which shows unidentified officers play a song with racist undertones (**Board Review 2 – 4**). He recalled the incident location but did not recall the events from IA 91 or IA 84, nor was he able to identify any officers present. PO Baratta heard a song being played in the background of IA 86 and confirmed that the sound did not come from his vehicle; he did not know where that song was coming from or why it was played. He recognized himself and Det. Martinos in the video in IA 84 between the 12 second mark and the 36 second mark as they were both dressed in the lighter blue polos.

According to the NYPD's Department Advocate's Office (DAO), Det. Martinos retired on August 29, 2020 (Board Review 50).

As PO Baratta placed PO Michael Haber and his partner on scene, both he and PO Thomas Owens were interviewed. PO Haber (**Board Review 35**) and PO Owens (**Board Review 36**) provided consistent testimonies. Both officers stated that they were assigned to a marked police van with several other officers, possibly from different commands, whom they did not know. PO Haber and PO Owens were initially assigned to a Detail Roster within the 78<sup>th</sup> Precinct and were later moved to 770 Eastern Parkway. The van full of officers responded to Bergen Street between Brooklyn Avenue and New York Avenue twice. The officers responded the first time after they heard a call for help come over the radio by an unknown officer. By the time the officers had responded, the situation appeared to be calm, and they were no longer needed. After about 20 minutes, the officers received a call that DI Romero's vehicle had broken down and they needed assistance. The officers responded to the incident location a second time. PO Haber noted that he was at the incident location for maybe five minutes while he fixed DI Romero's car. He recalled that civilians who lived in the neighborhood appeared to be on the street and on their balconies. While he did not remember what exactly these individuals were yelling, he knew that the civilians were yelling at the officers and throwing water bottles at them. PO Haber did not interact with any civilians, nor did he see any other officers interact with any civilians as he was focused on fixing DI Romero's vehicle.

Once DI Romero's vehicle was fixed, PO Haber left with his van of officers and returned to his post. He stated that he was familiar with PO Chen and PO Ortiz and noted that it was possible to swap vehicles, however, he did not specify which circumstances. He did not recall learning of any specific incident of that happening with PO Chen and PO Ortiz's vehicle. PO Owens was not too familiar with PO Chen or PO Ortiz as he does not work with them often. Both PO Haber and PO Owens reviewed the videos from IA 91, which shows an officer yell "Fuck you" at civilians; IA 84, which shows unidentified officers use physical force against unidentified civilians; and IA 86, which shows unidentified officers play a song with racist undertones (**Board Review 2 – 4**). They recognized the incident location but did not recall the events from any of the videos, nor was he able to identify any officers present. Neither of the officers yelled "Fuck you" at any of the civilians, they did not extend their middle finger at any civilians, they did not use any physical force on any civilians, nor did they play "Turkey in the Straw" also known as "Nigger Love a Watermelon" song while they left the incident location.

Lt. Alam was the last officer to be interviewed. Not only is Lt. Alam the Integrity Control Officer of the 71<sup>st</sup> Precinct, but he was also the Platoon Supervisor on June 3, 2020, when he was assigned to Mobile Field Force 405 (**Board Review 37**). He noted that at the 71<sup>st</sup> Precinct, the Patrol Supervisor is responsible for assigning vehicles to officers before and during their tour. A supervisor is authorized to take a vehicle from one set of officers and give it to another set of officers. If this occurs, then the supervisor would appraise the on-duty Lieutenant of the change. Further, this change should be documented on Roll Call as well as the Command Log. Upon the end of tour, the keys to all the vehicles in the command must be returned to the Desk Sergeant, who has a board of keys behind them. The Desk Sergeant is responsible for securing the RMP keys for the next platoon. Lt. Alam stated that some marked vehicles, like the ones that Lieutenants are assigned to, have a double set of keys. On June 3, 2020, Lt. Alam did not recall learning of a vehicle taken from one set of officers and given to another set of officers within the 71<sup>st</sup> Precinct. He reviewed the Roll Call from June 3, 2020 of Tour 3 from the 71<sup>st</sup> Precinct (**Board Review 21**) and confirmed that he was familiar with PO Chen and PO Ortiz and that they were assigned to RMP 5343. Also, on the Roll Call, Lt. Daniel Guida was listed as the Special Operations Lieutenant. Based on his experience, Lt. Alam explained that the Special Operations Lieutenant is generally responsible for several assignments: public safety, domestic incidents, neighborhood coordination programs, crime reduction, and overall maintaining quality of life. Lt. Alam never learned of any protests taking place on Bergen Street between Brooklyn Avenue and New York Avenue. He did not learn of any officer's vehicle breaking down and additional officers needing to respond to repair the vehicle. Lt. Alam did not recall responding to this incident location and no document place him on scene. Lt. Alam reviewed the video in IA 91 (**Board Review 2**). He did not recognize any officers seen in the video. None of the events portrayed in the video looked familiar to Lt. Alam. After queuing the video to the 33 second mark and pulling up the InputAce Screenshot of a 300% zoomed in view of the vehicle (**Board Review 24**), Lt. Alam stated that the picture was a little blurry, but the plate number resembled #5343. Lt. Alam did not know why a vehicle that was assigned to the 71<sup>st</sup> Precinct was present in the 77<sup>th</sup> Precinct during this incident.

#### Ranking Officer on Scene

According to police documentation, the 71<sup>st</sup> Precinct Commanding Officer was the ranking officer on scene. Through the interviewing process, Deputy Inspector Ludwig Romero was identified as the Commanding Officer. No testimonies indicate that DI Romero participated in any law enforcement actions taken during this incident. As such, he was not interviewed in connection with this incident.

### Concurrent Investigations

On August 10, 2021, Det. Mezchelyn Ellis, of the Internal Affairs Bureau, searched for concurrent cases using § 87(2)(b) and § 87(2)(b) names, date of births, the incident date, and incident location but was unable to find any (**Board Review 38**).

§ 87(2)(g)

[REDACTED]

### **Allegation (E) Untruthful Statement: Police Officer Jianwei Chen provided a misleading official statement to the CCRB.**

PO Chen (**Board Review 31**) testified that while he did not have documented the number of the vehicle that he used to travel to the THV at 770 Eastern Parkway in Brooklyn, as PO Ortiz was the recorder and the officer responsible for documenting the vehicle number in his memo book entries. PO Chen's review of the Roll Call from June 3, 2020 of Tour 3 from the 71<sup>st</sup> Precinct (**Board Review 21**) confirmed that he and PO Ortiz were assigned to RMP 5343. As the operator of the vehicle, PO Chen would have been the only officer with access to the vehicle's keys. PO Chen did not recall whether RMP 5343 was in his possession for the entirety of his tour, nor did he remember if another officer borrowed his vehicle with a supervisor's authorization due to emergency circumstances related to the 2020 protests. PO Chen viewed the video in IA 91 (**Board Review 2**), that shows an unidentified officer yell, "Fuck you" at civilians; he was also shown an InputAce Screenshot of a 300% zoomed in view of the plate number for RMP 5343 taken from the video from IA 91 (**Board Review 24**). PO Chen identified the plate number in the photograph as 5343. He did not recognize the events from the video. PO Chen did not know why the vehicle he drove to his post at 770 Eastern Parkway was being used by different officers at a location that was approximately a 12-minute drive away from his post. PO Chen explained that an emergency could have occurred where his vehicle would have been taken by another officer due to protests occurring at the time. PO Chen was not sure if he returned to the command in RMP 5343.

A misleading statement is one that intends to misdirect the fact finder and materially alter the narrative by intentionally omitting material fact(s), making repeated claims of "I do not remember" or "I do not know" when a reasonable person under similar circumstances would recall or would have been aware of material facts, or altering and/or changing a member's prior statement or account when a member is confronted with independent evidence indicating that an event did not happen as initially described. A material fact is a significant fact that a reasonable person would recognize as relevant to or affecting the subject matter of the issue being discussed NYPD Administrative Guide 304-10 (**Board Review 51**).

It is undisputed that PO Chen and PO Ortiz were assigned to RMP 5343 on June 3, 2020, and they used it to travel to their THV footpost. Through video footage, PO Chen conceded that RMP 5343 was being used at a location different from the one he was in. PO Chen was unable to provide any clear or definitive answers as to how the vehicle which he drove to the THV was being utilized by an unidentified set of officers within the confines of the 77<sup>th</sup> Precinct without his knowledge. There is no police documentation that notes the chain of custody of RMP 5343. Finally, PO Chen did not recall whether he returned to the command in the same vehicle that he was assigned to. It is unreasonable for PO Chen not to recall how the keys to RMP 5343 left his possession, what happened to the vehicle after he had driven it to his THV post earlier that day, or how he returned to

the 71<sup>st</sup> Precinct at the conclusion of his assignment. A misleading statement intentionally misdirects the fact finder and alters the narrative. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (F) Untruthful Statement: Police Officer Martin Ortiz provided a false official statement to the CCRB.**

PO Ortiz (**Board Review 30**) confirmed that he was the recorder and PO Chen was the operator. He stated that if RMP 5343 was reassigned to a different set of officers, then PO Ortiz would have made a memo book entry noting that he inspected the vehicle for mileage, gas, and any items left inside. PO Ortiz did not recall any instance when another officer had to take his vehicle, nor did not recall responding to Bergen Street between Brooklyn Avenue and New York Avenue, which was approximately one mile away from his footpost. PO Ortiz was shown the video in IA 91 (**Board Review 2**) which shows an unidentified officer yell, “Fuck you” at civilians right before he gets into RMP 5343. PO Ortiz did not recognize the events depicted in the video. Additionally, PO Ortiz was also shown an InputAce Screenshot of a 300% zoomed in view of the plate number for RMP 5343 taken from the video in IA 91 (**Board Review 24**). PO Ortiz stated that due to the quality of the photograph, he was unable to clearly make out the plate number. There was no reason that PO Ortiz could think of why the vehicle he was assigned to would have been at an incident location within the confines of a different precinct that was one mile away from his footpost. PO Ortiz maintained that as far as he remembered, no one took his vehicle between the start of his tour to the end of his tour.

PO Chen (**Board Review 31**), Sgt. Cheng (**Board Review 32**), Sgt. Charles (**Board Review 33**), and Lt. Alam (**Board Review 37**), all were shown the InputAce Screenshot of a 300% zoomed in view of the plate number for RMP 5343, taken from the video in IA 91 (**Board Review 24**), and all these officers were able to identify the numbers 5343 on the plate of the marked police vehicle without any difficulties.

A false statement is an intentional statement that a member of service knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement is made NYPD Administrative Guide 304-10 (**Board Review 51**).

The investigation determined that RMP 5343 was on Bergen Street between Brooklyn Avenue and New York Avenue, within the confines of the 77<sup>th</sup> Precinct on the evening of June 3, 2020. Throughout his interview, PO Ortiz maintained that RMP 5343 remained within his and PO Chen’s possession as he did not recall anyone taking his vehicle during his tour. When confronted with video evidence from this incident, that shows RMP 5343 at a different location than where PO Ortiz and PO Chen were assigned to and within a different precinct, PO Ortiz stated that he was unable to identify the vehicle number due to the quality of the zoomed InputAce screenshot, which every other officer who was shown the same screenshot was able to identify. Further, PO Ortiz was unable to provide a reason why the vehicle he was assigned to was in a different precinct, one mile away from his THV post. Given that RMP 5343 is material to this investigation as the subject officer for Allegation A: Discourtesy – Word goes into front passenger seat of RMP 5343, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) there is video evidence showing RMP 5343 in a different location within a different precinct on the same evening. Further, when every other officer saw the same photograph of the RMP plate number 5343, § 87(2)(g) PO Ortiz to not be able to identify the numbers on the vehicle plate. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

#### **Civilian and Officer CCRB Histories**

- This is the first complaint filed by § 87(2)(b) (Board Review 40).
- § 87(2)(b)
- PO Chen has been a member of service for 18 years and has been a subject in one other CCRB complaints, which was not substantiated.
  - Case 200913290 involved an unfounded allegation of Abuse of Authority – Property Damaged that was pled against PO Chen.
- PO Ortiz has been a member of service for 11 years and has been a subject in one other CCRB complaint, which is currently ongoing.
  - Case 202102585 involves a physical force allegation.
- PO Baratta has been a member of service for ten years and has been a subject in two other CCRB complaints, none of which have been substantiated.
  - Case 201214673 involved an exonerated allegation of Abuse of Authority – Premises entered and/or searched that was pled against PO Baratta.
  - Case 201602424 involved two Force allegations. The first allegation was exonerated for Force – Pepper spray. The second allegation was unsubstantiated for Force – Physical Force.

**Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation.
- On August 16, 2021, the New York City Office of the Comptroller confirmed that no notice of claim was filed for this case (**Board Review 44 – 45**).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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Squad:      11

Investigator:      Tahreem Khan      Inv. Tahreem Khan      January 20, 2022  
   Signature      Print Title & Name      Date

Squad Leader:      Edwin Pena      IM Edwin Pena      01/20/2022  
   Signature      Print Title & Name      Date

Reviewer:      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_  
   Signature      Print Title & Name      Date